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No. 800

In the Supreme Court of the United States

OCTOBER TERM, 1959

NORWICH, CONNECTICUT PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL NO. 494, ET AL., PETITIONERS

v.

BOYD LEEDOM, ET AL., AS CHAIRMAN, AND AS MEMBERS OF AND CONSTITUTING THE NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

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Cases:

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Statute:

National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*):	
Section 9(b)(2)	4, 6, 7, 8, 9
Section 10	9

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OPINIONS BELOW

The order of the District Court granting petitioners' motion for a preliminary injunction, and its findings of fact and conclusions of law in support thereof, are set forth at R. 40-44.[1] The opinion of

[1] References are to the portion of the record printed as a Joint Appendix to the briefs in the court below.

the court below (Pet. 1a-6a), reversing the District Court and setting aside the preliminary injunction, is not yet officially reported.

JURISDICTION

The judgment of the Court of Appeals was entered on February 18, 1960 (Pet. 1a). The petition for a writ of certiorari was filed on March 18, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the District Court has jurisdiction to review a Board determination under Section 9 of the National Labor Relations Act that a plant-wide, rather than a craft, unit is appropriate for bargaining purposes, where the reasons for rejecting a craft unit turn on considerations involving an exercise of judgment and discretion and do not encounter any statutory prohibition.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), are set forth at pp. 2-3 of the petition.

STATEMENT

A. The Board representation proceeding

Petitioners are two labor organizations, the International Printing Pressmen and Assistants' Union of North America, AFL-CIO (hereafter called the International), and its affiliated subordinate, Norwich

Printing Specialties and Paper Products Union, Local 494 (hereafter called Local 494). Since 1945, Local 494 has represented all of the production and maintenance employees of the Robertson Paper Box Co., at its Montville, Connecticut plant, in a single plant unit, as a result of a Board-conducted consent election (R. 3-4, 40, 41, 11, n. 3). In December 1958, Local No. 493 of the International Brotherhood of Teamsters petitioned for a representation election in this bargaining unit. The incumbent Local 494 intervened in the Board proceeding,[2] and requested that the pressmen and certain other employees in the plant, who were alleged to constitute a true craft group, be severed from the overall plant unit and given an opportunity to vote separately on whether they desired representation as a craft or continued inclusion in the overall unit (R. 5, 10, 41, 5-6). The Board rejected this request, in a decision issued on March 2, 1959, directing an election in the overall plant unit. The Board pointed out that the unit position of Local 494 in the representation proceeding was "wholly inconsistent with its unit position in collective bargaining with the Employer" (R. 41, 6, 10-12, 11, n. 3). For Local 494 "not only has represented the overall unit since 1945, but negotiated for a new contract on that basis until the instant petition was filed, with the negotiations being terminated then only by the Employer because of the filing of the petition" (*ibid.*).

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[2] Two other unions were also permitted to intervene (R. 10, n. 1).

Local 494 petitioned the Board for reconsideration of its decision on the ground that the denial of a separate election for the alleged craft employees was contrary to Section 9(b)(2) of the Act (set forth at p. 2 of the petition). At the same time, it amended its unit request, seeking severance of only the pressmen and their assistants and helpers. On March 20, the Board denied the motion for reconsideration (R. 41, 31, 12-17, 6).

However, on March 25, the Board issued a notice to show cause why it should not find appropriate a craft unit of pressmen, as specified in Local 494's amended request. The employer responded with an offer to prove that Local 494 was not a traditional representative of craft employees, and, accordingly, that its craft unit request did not satisfy one of the criteria for the establishment of craft units enunciated in *American Potash & Chemical Corporation*, 107 NLRB 1418.[3] On April 9, the Board reopened the record and remanded the case to the Regional Director for further hearing on the issue of the appropriate unit (R. 41, 29-30). At the reopened hearing, the only evidence introduced was that by the employer; it was intended to show that Local 494 had customarily organized employees in the paper box industry on an industrial, rather than a craft, basis. (R. 32).

[3] In this decision the Board announced that it would permit a craft unit to be severed from a pre-existing larger unit only where the employees sought to be severed constituted a true craft group, and the union seeking to represent them separately specialized in representing that craft.

On August 6, the Board issued a supplemental decision. It again directed an election in an overall plant unit, predicating its renewed denial of Local 494's request for a craft unit election solely upon a finding, based upon the evidence adduced by the employer, that "Local 494 is not a qualified 'traditional representative' under *American Potash* for purposes of the alleged craft severance which it seeks" [4] (R. 42, 37, 31-38, 41-42). Analyzing this evidence—which consisted of provisions in the International's Constitution, statements in union journals, and typical contracts of Specialty Unions like Local 494 (R. 32-35)—the Board concluded that it showed that a "Printing Specialties and Paper Products" local was different from a regular "Printing Pressmen" local of the International, in that it was "not a craft union but an industrial union." The Board also noted that this conclusion was confirmed by certain other factors, including the fact that "Local 494 itself represented the employees involved herein on an overall production and maintenance basis for 13 years prior to the instant petition" (R. 35, 42).

B. The Judicial Proceedings

Petitioners brought suit in the District Court to have the Board's decision and direction of election enjoined and set aside. Their supplemental complaint alleged that the Board's renewed denial of a separate

[4] In view of this finding, the Board found it unnecessary to pass upon the further question whether the alleged craft unit sought was a true craft unit under *American Potash* principles (R. 37, n. 10, 42).

vote to the supposed craft unit sought by Local 494 violated Section 9(b)(2) of the Act (R. 26-28, 3, 23, 24). In response, the Board moved to dismiss the complaint on the grounds that the court lacked jurisdiction of the subject matter and that the complaint failed to state a claim warranting relief (R. 40).

On September 22, the District Court denied the Board's motion to dismiss and granted petitioners' motion for a preliminary injunction to enjoin the election directed by the Board (R. 43-44). The court —viewing the Board's reference to Local 494's thirteen-year history as the bargaining representative of the employees involved on an overall production and maintenance basis as reliance on a prior Board determination—concluded that the Board had, at least in part, based its denial of a craft unit on the ground forbidden by Section 9(b)(2) (R. 42, 60, 55-56). Accordingly, it held that it had jurisdiction to enjoin the Board election under *Leedom* v. *Kyne*, 358 U.S. 184.

On appeal, the court below set aside the preliminary injunction and remanded the case to the District Court with directions either to dismiss the complaint or to take such further action as would not be inconsistent with its opinion (Pet. 6a). The Court of Appeals held, contrary to the District Court, that the Board's denial of a craft unit did not violate Section 9(b)(2) because it was not based, even in part, upon the ground that a different unit had been established by a prior Board determination. Rather, the

denial was predicated upon the failure of Local 494 to satisfy the traditional representative requirement of the *American Potash* criteria, which criteria lie "within the discretionary area of Board unit determinations" (Pet. 5a-6a). In these circumstances, the Court of Appeals concluded, the District Court lacked jurisdiction to review the Board's denial of a craft unit in this case.

ARGUMENT

1. *Leedom* v. *Kyne*, 358 U.S. 184, permits an exception to the general rule that Board representation determinations are not reviewable in the district court where it is plain that the Board has exceeded statutory or constitutional requirements and no other adequate remedy exists for redress of the wrong. In the absence of such a showing, district court review is barred. See *National Biscuit Division* v. *Leedom*, 265 F. 2d 101 (C.A. D.C.), certiorari denied, 359 U.S. 1011. The statutory provision that the Board is alleged to have violated in this case is Section 9 (b) (2), which provides that the Board shall not decide that any craft unit is inappropriate for bargaining purposes "on the ground that a different unit has been established by a prior Board determination." The District Court found a violation of this provision because the Board, in its decision, alluded to the fact that Local 494 had previously represented the employees in question in a plant-wide unit, a status which stemmed from a Board-conducted consent election. The Court of Appeals, on the other hand, con-

cluded that there was no violation of Section 9(b)(2) because, reading the Board decision as a whole (R. 31-37), it was evident that the only basis for the denial of a craft unit was that Local 494 had failed to meet the "traditional representative" requirement of the Board's *American Potash* criteria (n. 3, *supra*). The reference to Local 494's prior bargaining history was not an independent ground for decision, but merely an additional factor cited to support the conclusion, already reached on the basis of other ample evidence, that Local 494 did not customarily represent employees on a craft basis. The Court of Appeals' reading of the Board's decision is manifestly correct. In any event, a narrow issue of this kind, turning on the individual terms of a particular Board decision, does not call for review by this Court.

2. Although petitioners attempt to inject the issue (Pet. 10-14), the propriety of the Board's *American Potash* criteria for the establishment of craft units is not presented. As pointed out above, the District Court has jurisdiction only if it can be shown that the Board has violated a statutory or constitutional prohibition,[5] and the only statutory restriction on the Board's discretion in respect to permitting or not permitting a craft unit is that such unit should not be denied solely because the Board had previously found a different unit appropriate. The *American Potash* criteria clearly do not rest on a prior Board determination; under them, Local 494, had it been the tradi-

[5] As the Court of Appeals noted (Pet. 3a, n. 2): "No constitutional right is asserted to have been denied" in this case.

tional craft representative and had the employees which it sought to represent separately been a true craft group, would have been entitled to a separate craft election irrespective of what the prior bargaining unit had been. Hence, whatever may be said about the propriety of these criteria, they do not involve a violation of Section 9(b)(2), but merely relate to how the Board shall exercise the discretion which it has under the Act in respect to defining appropriate units. As the Court of Appeals recognized (Pet. 5a-6a), questions relating to the proper exercise of the Board's discretion in representation cases cannot be raised in a district court suit, but only in review proceedings under Section 10 of the Act.[8]

3. Contrary to petitioner's contention (Pet. 14-16), the decision below does not conflict with *National Labor Relations Board* v. *Pittsburgh Plate Glass Co.*, 270 F. 2d 167 (C.A. 4), certiorari denied, 361 U.S. 943. In *Pittsburgh*, the Board, on the basis of the *American Potash* criteria, selected a craft group as an appropriate unit. The Court of Appeals, in refusing to en-

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[8] Although not germane to this suit, it may be noted that the "traditional representative" requirement of the *American Potash* criteria is a reasonable means of accommodating the Act's competing objectives of maintaining stability and of giving special recognition to the interests of craft employees. The requirement insures that an existing bargaining relation will not be broken up just for the sake of change or because a rival union has embarked on a raid, but only where the loss to stability is compensated for by some net gain to the craft employees, *i.e.*, a representative who truly specializes in and understands their problems. See *Libby-Owens-Ford Glass Co.*, 115 NLRB 1452, 1456-1457, enforced, 241 F. 2d 831 (C.A. 4).

force a Board order directing the employer to bargain with the union that the members of the craft unit had selected, held (270 F. 2d at p. 172) that the Board had erred in narrowing its discretion in respect to defining appropriate units to "the flat rule" of *American Potash* "that craft units must be split off from an established industrial unit whenever requested by a union that traditionally represents employees in the craft * * *".

Pittsburgh thus held that the Board cannot designate a craft unit merely because the employees involved request it and the union traditionally represents members of that craft, but must "decide *in each case* what unit would be most appropriate to effectuate the overall purpose of the Act to preserve industrial peace" (*id.*, p. 173). It did not hold, or even suggest, that the Board cannot require, as one of the conditions for selecting a craft unit, that the union involved be one that traditionally represents members of the craft. In the instant case, the Board did not designate a craft group as the appropriate unit, but merely refused to do so because the union lacked a significant qualification. The Board's action in directing that the election be held on a plant-wide basis is thus consistent with the *Pittsburgh* decision.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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